

deleting the subsection, incidental services will be more readily available to the public and conserve Commission resources given the other provisions of § 22.323 which require such a result.

§ 22.365 Antenna structures; air navigation; air navigation safety.

NPRM:

Licensees may not allow antenna structures to become a hazard to air navigation.

Recommendation:

Add the following paragraph:

(c) Exception. Licensees of in-building radiation systems are not responsible for FAA notification requirements relating to the building and are not responsible for compliance with lighting requirements.

Discussion:

In-building radiation systems are completely shielded and do not alter the structure's exterior. Therefore, they present no possible danger to air navigation.

§ 22.367 Antenna polarization.

§ 22.367(a)(4)

NPRM:

[Stations in the Cellular Radiotelephone Service must use vertical polarization.]

Recommendation:

Following § 22.367(a)(4), add the following: In order to provide evolving services to a variety of subscriber terminals in the most efficient manner, cellular licensees may, without separate authorization, utilize other types of polarization.

Discussion:

In an effort to increase the flexibility for cellular carriers and improve service to cellular telephone subscribers, NewVector recommends eliminating the requirement that stations in the Cellular Radiotelephone Service use only vertical polarization. As the cellular industry has matured, carriers have moved from primarily providing service to car telephones to providing service to various types of cellular receivers, such as portable telephones and laptop computers. While telephones installed in automobiles operate best with vertical polarization, several new uses of cellular telephones — portable telephones, fixed applications such as cellular PBX's, Tellular, etc. rarely operate optimally with vertical polarization. Similar to the fixed point-to-point services, these applications make better use of horizontal or other polarization techniques in furtherance of interference free operation. In addition, cellular providers should be allowed to implement new technology and subscriber equipment which uses different types of polarization to mitigate interference and signal fading.

Subpart E - Paging and Radiotelephone Service

§ 22.507

Number of transmitters per station.

NPRM:

The rules in this section concern the number of transmitters licensed under each station authorization in the Paging and Radiotelephone Service.

(a) Unless otherwise allowed in this subpart, each station must comprise at least one separate and dedicated transmitter, providing service to the public, for each transmitting channel at each location where that channel is assigned for use by that station.

(b) There is no limit to the number of transmitters that a station may comprise. However, transmitters within a station must be operationally related. Furthermore, it may become necessary, in certain cases, for the Commission to break up wide-area systems into two or more stations for administrative convenience. Except for nationwide paging and other operationally related transmitters, transmitters that are widely separated geographically are not licensed under a single authorization. The Commission may consolidate separately authorized stations upon request of the applicant, if appropriate under this section.

Recommendation:

Amend to read:

The rules in this section concern the number of transmitters licensed under each station authorization in the Paging and Radiotelephone Service. These rules do not apply to the Rural Radiotelephone Service.

* * * * *

Discussion:

While most of the technical rules in the Paging and Radiotelephone Service should apply equally to the Rural Radiotelephone Service, as is suggested below in the comments on the Subpart F rules, this rule should not be among those applied.

Applying subsection (a) to the Rural Radiotelephone Service would restrict the use and function of equipment used to provide basic exchange telephone service by radio in rural areas. Some vendors offer equipment that is able to transmit simultaneously on up to six available frequencies in the 450 MHz band. Prohibiting multifrequency transmitters, without consideration of the transmitters' ability to operate on multiple frequencies at the same time, would be detrimental to carriers' ability to provide rural service at a reasonable cost.

Applying subsection (b) to the Rural Radiotelephone Service would appear to restrict carriers' ability to institute service in unrelated locations under a blanket temporary-fixed license. If subsection (b) does not apply to the Rural Radiotelephone Service, or if it does not apply to temporary-fixed operations at unrelated locations under a single license, carriers will continue to be able to serve the public interest by providing temporary-fixed service for short-term needs (e.g., providing service during temporary facility disruptions or while awaiting authorization for permanent facilities). If this rule is applied to Rural Radiotelephone Service temporary-fixed operations, carriers would need to apply for numerous temporary-fixed authorizations that are not now necessary.

§ 22.509

Procedure for mutually exclusive applications.

NPRM:

[The *NPRM* proposes to adopt a "first-come, first-served" approach to processing mutually exclusive applications in the Paging, Radiotelephone and Rural Radio Services. The proposed "first-come, first-served" rule is substantially different from the existing cut-off procedures. Adoption of the rule would eliminate the 60-day filing window during which mutually exclusive applications can be filed. Assuming an application is acceptable for filing, the first filed application under the proposed rule would be granted, and all other applications would be dismissed. In the event that two mutually exclusive applications are filed on the same day, the Commission will conduct a lottery.]

Recommendation:

Amend as follows:

(a) First-filed. Except as provided in paragraphs (b), (c) and (e), . . .

(b) Same filing date. [After the first sentence, add] Applications that satisfy the criteria set forth at paragraph (c) of this section will also be included in a random selection process.

(c) 40 mile exception. If an application is filed for a facility to be located within 40 miles of a station licensed to an entity other than the applicant, the licensee of the authorized station has 30 days from the date that the first application is placed on public notice to file a mutually exclusive application. The applications will then be included in a random selection process.

Change (c) to (d) Filing date.

Change (d) to (e) Renewal.

Discussion:

See NewVector's detailed discussion of the proposed "first come, first served" procedures in its attached comments.

§ 22.535 Effective radiated power limits.

NPRM:

(a) Maximum ERP. * * *

(b) Basic power limits. * * *

Recommendation:

Reverse order of sections as follows:

(a) Basic power limits. * * *

(b) Maximum ERP. * * *

Discussion:

Sections 22.535(a) and (b) should be reversed to reflect the fact that (a) is the general rule and (b) is the exception.

Separately, NewVector asserts that power limits for all services should continue to be specified in watts, which is currently the universal standard. Both the current and proposed FCC rules specify ERP in watts. Also, NewVector field engineers use wattmeters to read output power.

§ 22.537(g) In-building radiation systems.

Discussion/Recommendation:

The section should cross-reference NewVector's proposed §§ 22.115(a)(3) and 22.163(a)(3)(i), which relate to an exemption from FAA requirements for in-building facilities, discussed in detail in this Appendix.

§ 22.563**Provision of rural radio service upon request.****NPRM:**

Channels in the frequency ranges 152.03-152.81, 157.77-158.67, 454.025-454.650 and 459.025-459.650 MHz, inclusive, are also allocated for assignment in the Rural Radio Service. Stations in the Paging and Radiotelephone Service authorized to provide public mobile service on these channels must also provide rural radio service upon request from a subscriber.

Recommendation:

Amend the second sentence as follows:

Stations in the Paging and Radiotelephone Service authorized to provide public mobile service on channels in the frequency ranges 152.51-152.81, 157.77-158.07, 454.375-454.650 and 459.375-459.650 MHz, inclusive, must also provide rural radio service upon request from a subscriber.

Discussion:

The proposed § 22.563 includes additional channels on which paging and radiotelephone service licensees must also provide rural radio service. NewVector opposes the proposed increase in light of (1) the high costs associated with modifying systems to provide such service, and (2) the number of frequencies on which rural radio service must already be provided. Therefore, the channels on which paging and radiotelephone service licensees must provide rural radio service should be limited to those set forth in the current Part 22 Rules. See current §§ 22.501(b) and (c).

§ 22.565**Transmitting power limits.****NPRM:**

(a) Maximum ERP. * * *

(b) Basic power limit. * * *

Recommendation:

Reverse order of sections as follows:

(a) Basic power limit. * * *

(b) Maximum ERP. * * *

Discussion:

Sections 22.565(a) and (b) should be reversed to reflect the fact that (a) is the general rule and (b) is the exception.

§ 22.567**Technical channel assignment criteria.****NPRM:**

[This rule enables licensees to use formulas to define service areas and interference potential instead of the Carey method.]

Recommendation/Discussion:

NewVector supports the use of formulas as long as it can be proven that the formulas closely track the Carey method. See NewVector's discussion in the attached Comments.

§ 22.567(b)**Protection for fixed receivers.****NPRM:**

[This section discusses protection for fixed receivers and applies only to assignment of the channels designated in § 22.561 as mobile channels to base and fixed transmitters.]

Recommendation/Discussion:

NewVector supports the Commission's proposal to allow the use of mobile channels for fixed and base operations subject to the condition that such use does not interfere with existing systems only. An applicant proposing to use a mobile channel for fixed or base operations can determine the location of existing adjacent co-channel receivers and thereby engineer its proposal to avoid causing interference to those receivers. However, a licensee authorized to use mobile channels for fixed or base operations should not be required to eliminate interference to newly established systems.

§ 22.569**Additional channel policies.****NPRM:**

[The rules in this section permit a carrier to apply for and obtain no more than two channels in an area per application cycle.]

Recommendation/Discussion:

Adopt rule as proposed. NewVector strongly supports the proposed rule, which eliminates the need for burdensome traffic loading studies while still preventing frequency warehousing.

§ 22.577**Grandfathered dispatch service.****NPRM:**

[This section discusses in detail the rules governing grandfathered dispatch service.]

Recommendation/Discussion:

In response to the Commission's inquiry, USWC notes that it is not providing dispatch service. If no carriers are providing such service, USWC asserts that the rule should be eliminated.

Subpart F - Rural Radiotelephone Service

§ 22.701

Scope.

NPRM:

The rules in this subpart govern the licensing and operation of stations and systems in the Rural Radiotelephone Service. The licensing and operation of these stations and systems is also subject to rules elsewhere in this part that apply generally to the Public Mobile Services. However, in cases of conflict, the rules in this subpart govern.

Recommendation:

Amend to read:

The rules in this Subpart govern the licensing and operation of stations and systems in the Rural Radiotelephone Service. The licensing and operation of these stations and systems is also subject to rules elsewhere in this part that apply generally to the Public Mobile Services. Specifically, the licensing and operation of stations in this service on frequencies shared with the Paging and Radiotelephone Service is subject to the rules in Subpart E, which governs the latter service. However, in cases of conflict, the rules in this subpart govern.

Discussion:

The "scope" paragraph is clarified to make explicit that Rural Radiotelephone Service licensees are subject to the technical rules of Subpart E for frequencies shared with stations governed by that Subpart.

§ 22.709

Rural radiotelephone application requirements.

NPRM:

In addition to information required by Subparts B and D of this part, applications for authorization to operate a station in the Rural Radio Service must contain the applicable supplementary information described in this section.

* * * * *

Recommendation:

Amend to read:

In addition to information required by Subparts B and E of this Part, * * *

* * * * *

Discussion:

The information required by Subpart D pertains to developmental authorizations and does not pertain to Rural Radiotelephone applications, except developmental applications. Because the Rural Radiotelephone Service utilizes frequencies shared with the Paging and Radiotelephone Service, the reference should be to Subpart E.

§ 22.715**Technical channel assignment criteria for rural radiotelephone stations.**Recommendation:

Designate the current text of proposed § 22.715 as subsection (a) and add new subsection (b) to read:

(b) The number of channels that may be applied for or assigned in the Rural Radiotelephone Service shall be determined on a case-by-case basis, taking into account all relevant factors, including the grade of service required, the equipment utilized, the amount and type of service for which demand is projected, the clustering of the customer locations, the terrain, and the direction from which interfering signals arrive.

Discussion:

USWC utilizes the Rural Radio Service (to be renamed the Rural Radiotelephone Service) to provide basic telephone exchange service to customers in areas with inadequate or nonexistent landline facilities. The "two channel at a time" rule applicable in the Paging and Radiotelephone Service should not apply to the Rural Radiotelephone Service, because it does not correspond with the way channels are used in this service. Channels are used in this service to provide a specific level of communications service to fixed customers with statistically predictable capacity needs. Because radio is being used to provide the equivalent of landline basic exchange service, it may be appropriate or necessary to provide a P.01 grade of service, which will require a number of channels determined by a number of factors that will vary in each case.

The basis of the two-channel rule — to prevent warehousing of channels — is laudable. However, this rule and the current rule allowing up to four initial channels will not, in several actual cases, provide the present customer base with the desired grade of service.

Several state PUCs are requiring USWC to eliminate "party line" service and instead provide One Party Universal Service within the near future. Rural service is being updated voluntarily in several other states. In many remote areas, BETRS or conventional rural radio stations are the most timely or economical means of delivering this needed service improvement. Applying the two channel limit would restrict the installation of such facilities and effectively deny single-party telephone service to families in some rural areas.

While waivers may appear to be an alternative way to deal with such situations, use of radio for rural telephone service is expected to increase in the near future, which would result in frequent filings of waiver requests. Adoption of the recommendation above would serve the public interest by avoiding the need for waivers and establishing a case-by-case analysis for the assignment of channels for fixed rural service.

§ 22.725(d) (new subsection)

Recommendation: Add new § 22.725(d), to read:

(d) The power limitations set forth in proposed § 22.565 shall be applicable, except with respect to facilities to which proposed § 22.729 applies.

Discussion:

The proposed rules relating to the Rural Radiotelephone Service do not set forth the applicable power limitations. Power limits for the Rural Radiotelephone Service should be the same as for the Paging and Radiotelephone Service, with which these frequencies are shared — in particular, the base station channel “basic power limit” of 500 watts at 500 feet AAT resulting from the interaction of proposed §§ 22.565(b) and 22.565(c).

§ 22.751 et seq.

NPRM: In Appendix A to the *NPRM*, the Commission inquires how the conventional Rural Radiotelephone Service channel usage should be governed vis-à-vis the Paging and Radiotelephone Service, with which the channels are shared.

Discussion:

The Commission does not have any technical rules for assignment of channels in the Rural Radio Service. Some technical rules are needed to protect Rural Radiotelephone Service and Paging and Radiotelephone Service licensees from mutual interference. Rural Radiotelephone Service stations are highly sensitive to interference from mobile telephone and paging stations because they typically use low-powered transmitters and highly sensitive receivers. Rural radiotelephone stations should be required to use horizontal polarization and directional antennas in most cases (see proposed § 22.367(b)); these requirements would limit interservice interference to some degree because the Paging and Radiotelephone Service stations use vertically polarized antennas. Rule changes proposed herein also address transmitting power and channel assignment criteria for Rural Radiotelephone Service stations.

Utilization of the Rural Radiotelephone Service would benefit from the negotiation of arrangements with Mexico and Canada similar to those arrived at for

cellular service, which would permit the establishment of standard conditions similar to those in proposed §§ 22.955 and 22.957.

§ 22.757 Channels for basic exchange telephone radio systems.

NPRM: In Appendix A, the Commission inquires as to whether the 800 MHz channels should continue to be available for BETRS in the Rural Radiotelephone Service or should be made available for other uses.

Discussion:

It would be premature to remove the 800 MHz frequencies, which are shared with private land mobile services governed by Part 90, from the Rural Radiotelephone Service. These channels have only been available for BETRS for a short time, and digital equipment permitting effective use of these channels is still under development. Furthermore, the propagation characteristics of 800 MHz transmission limit the usefulness of these channels in mountainous terrain.

Even when digital equipment is developed, however, the Part 90 mileage separation rules will render it unusable in many cases. To permit its use, the 100 mile limitation should be relaxed.

If the separation requirements are not relaxed, these channels may not be suitable for BETRS under most circumstances, and the Commission should consider allowing their use for other Part 22 purposes.

Subpart G - Air-ground Radiotelephone Service

§ 22.819

AGRAS compatibility requirements.

NPRM:

In Appendix A to the *NPRM*, the Commission inquires as to whether there are any stations operating under the original air-ground standards instead of the 1985 AGRAS standard, and proposes grandfathering such stations until January 1, 1994.

Discussion:

All of the air-ground stations in USWC comply with the AGRAS standard. However, these stations also operate under the original standard in order to accommodate customers who have not converted to the new standards. The proposed January 1, 1994 date for required conversion to the AGRAS standard is appropriate; this time frame should allow ample time for licensees and users to convert their systems to the AGRAS standard.

Subpart H - Cellular Radiotelephone Service

§ 22.903 **Conditions applicable to former Bell Operating Companies.**

NPRM: (d) Transactions * * * A copy of any contract, agreement or other arrangement entered between such entities with regard to interconnection with landline network exchange and transmission facilities must be filed with the Commission within thirty days after the contract, agreement, or other arrangement is made.

Recommendation:

Delete the above-quoted sentence requiring that BOCs file copies of interconnection contracts, agreements, or other arrangements (collectively "agreement") with the Commission within thirty days after the agreement is made.

Discussion:

Under the current rules, a wireline carrier must file "an exhibit indicating exactly how its proposed system would interconnect with the landline network" whenever it files an FCC Form 401. See 47 C.F.R. §§ 22.913, 22.923. A similar requirement is proposed for wireline carriers which file unserved area applications. See proposed § 22.953(a)(5)(x). Further, wireline carriers are required to provide copies of all such agreements upon Commission request. Accordingly, as wireline carriers must file interconnection information with FCC Form 401 filings, requiring one specific group of wireline carriers (Bell Operating Company affiliates) to submit copies of interconnection agreements within thirty days would result in duplicative filings.

§ 22.911 **Cellular geographic service area.**

NPRM: * * * The CGSA is the area within which cellular systems are entitled to protection and within which adverse effects for the purpose of determining whether a petitioner has standing are recognized. Licensees of the first cellular system on each channel block in MSAs 1 through 90 must maintain a CGSA that covers 75% of the geographic area of the MSA. Licensees of the first cellular system on each channel block in MSAs 91 through 305 must maintain a CGSA that covers 75% of the geographic area or population of the MSA.

Recommendation:

Delete all text after "recognized."

Discussion:

The Commission should eliminate the mention of 75% coverage of population or geographic area for MSA licensees. The coverage requirement was previously eliminated when the Commission adopted the *Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Services*, Second Report and Order, 7 FCC Rcd. 2449 (1992) [hereinafter "*Unserved Area, Second R&O*"], which redefined CGSA to be the composite 32 dBu contours of a cellular system. See 47 C.F.R. § 22.903(a).

§ 22.911(b)NPRM:

(b) Alternative CGSA determination * * * For the purpose of such submission, cellular service is considered to be provided where the predicted or measured median field strength equals or exceeds 32 dBuV/m.

Recommendation:

Amend to read as follows:

(b) Alternative CGSA determination * * * For the purpose of such submission, cellular service is considered to be provided where the predicted or measured median field strength equals or exceeds 32 dBuV/m. Further, service within dead spots is presumed. See proposed § 22.99.

Discussion: The proposed rule should be clarified to make clear that, consistent with proposed § 22.99, service to dead spots is presumed.

§ 22.911(c)(1) Cellular geographic service area.NPRM:

(c) CGSA extension areas. * * *

(1) During the five year fill-in period of the system in the MSA or RSA containing the extension, the licensees of systems on the same channel block in adjacent MSAs or RSAs may agree that the portion of the service area of one system that extends into unserved area in the other system's MSA or RSA is part of the CGSA of the former system.

Recommendation:

Amend to read:

(1) During the five year fill-in period of the system in the MSA or RSA containing the extension, the licensees of systems on the

same channel block in adjacent MSAs or RSAs may agree that the portion of the service area of one system that extends into the other system's MSA or RSA is part of the CGSA of the former system, provided that the CGSAs of the two systems do not overlap.

Discussion:

The proposed change is intended to clarify, consistent with the proposed definition for "unserved areas" (see proposed §§ 22.99 and 22.911(d)) that unserved areas are defined upon expiration of the five-year fill-in period.

§ 22.911(d)

NPRM:

(d) Unserved areas. Unserved areas are areas outside of all existing CGSAs (on either of the channel blocks), to which the Communications Act of 1934, as amended, is applicable.

Recommendation:

(d) Unserved areas. Unserved areas are areas within the United States, its territories and possessions, outside of all existing CGSAs in markets where the five-year fill-in period has expired with respect to a particular channel block.

Discussion:

The proposed definition should clarify the definition of unserved areas as used in the Cellular Radiotelephone service.

§ 22.912(a)

Service area boundary extensions.

NPRM:

(a) Contract extensions. Licensees of the first authorized cellular systems on the same channel block in adjacent cellular markets may agree to allow service area boundary extensions into their markets during the five year fill-in period of the market into which the service area extends.

Recommendation:

Amend to read:

(a) Service area boundary extensions. The licensees of the initial cellular systems authorized on a given channel block in two or more adjacent cellular markets may propose contour extensions as calculated in accordance with § 22.911 which extend beyond the cellular market boundary, consistent with the following provisions:

(1) De minimis extensions. Service area boundaries may extend into adjacent MSAs or RSAs if such extensions are *de minimis* and are demonstrably unavoidable for technical reasons of sound engineering design. Paragraph (b) of this section sets forth additional requirements applicable only to unserved area systems.

(2) Extensions by Agreement. The licensees of the initial cellular systems authorized on a given frequency block in two or more adjacent MSAs or RSAs may agree to allow service area boundary extensions into their MSAs or RSAs during the five-year fill-in period of the MSA or RSA into which the service area extends.

Discussion:

Proposed subsection (a) fails to recognize situations in which existing licensees file applications proposing *de minimis* extensions into an adjacent market for technical reasons, irregular terrain, etc. These extensions are not always made pursuant to agreements with the adjacent licensee but, nonetheless, should be granted upon making the necessary *de minimis* extension showing. NewVector also emphasizes that proposals made pursuant to subsection (a)(1) above are not made with the intent of obtaining protected CGSA area as indicated by the "service area boundary extensions" heading. Thus, such *de minimis* extensions should be permitted regardless of whether the five year fill in period has expired in the adjacent market. NewVector recommends that the Commission revise § 22.912 consistent with the rule adopted in the unserved area proceeding (*see* 47 C.F.R. § 22.903(d)) (with proposed modifications in bold) which recognized the distinction between *de minimis* contour extensions and extensions made with the consent of the adjacent licensee. Furthermore, NewVector has deleted the use of the term "contract" and replaced it with the term "agreement" to allow for less formal understandings between adjacent licensees.

§ 22.913

Effective radiated power limits.

NPRM:

(a) Maximum ERP. The effective radiated power (ERP) of base transmitters and cellular repeaters must not exceed 500 watts. The ERP of mobile transmitters and auxiliary test transmitters must not exceed 7 watts.

Recommendation:

Amend to read as follows:

(a) Maximum ERP. The effective radiated power (ERP) of base transmitters and cellular repeaters must not exceed 500 watts, unless coordination is performed and agreements are reached with

all neighboring carriers within 75 miles. The ERP of mobile transmitters and auxiliary test transmitters must not exceed 7 watts.

Discussion:

Under the Commission's current rules, a carrier must comply with the height-power restrictions of 47 C.F.R. § 22.905 or frequency coordinate with all adjoining co-channel licensees within 75 miles of the base station. In adopting the existing standard, the Commission stated that "interference can best be controlled through coordination between carriers and by maintaining the field strength limit at the bound of the CGSA" and that "numerous benefits would result from relaxing the antenna height-power restriction," including reducing cost of system construction by allowing more one-cell systems and cell splitting, rather than constructing new cell sites. *See Liberalization of Technology and Auxiliary Service Offerings*, Report and Order, 3 FCC Rcd. at 7033, 7036 (1988) [hereinafter "*Auxiliary Service Offerings, R&O*"]. Therefore, NewVector believes that the Commission should continue to waive the height-power requirement if the licensee makes a showing that coordination has been performed and that agreement has been reached with all neighboring carriers that are within 75 miles. This is consistent with existing procedures and is in furtherance of the Commission's desire to encourage licensee cooperation.

§ 22.919 Electronic serial numbers.

Discussion:

NewVector recommends the Commission adopt the rule as proposed, but emphasizes that the Commission should incorporate the ESN criteria into the type-acceptance rules to clarify that manufacturers will be subject to the Commission's enforcement procedures if they do not comply with the ESN requirements.

§ 22.923 Cellular system configuration.

NPRM: Mobile stations communicate with and through base stations only.

Recommendation:

Amend to read as follows:

Mobile stations communicate with and through base stations and cellular repeaters only.

Discussion:

Since the proposed rules do not specifically define the term "base station," proposed § 22.923 should be modified to clarify that the use of cellular repeaters is included in the definition of "base station."

§ 22.933**Cellular system compatibility specifications.****NPRM:**

[The *NPRM* requires all equipment used in cellular radiotelephone service to be designed in compliance with the technical specifications for compatibility of mobile and base stations contained in OET Bulletin 53.]

Recommendation:

Amend by adding the following immediately after the last sentence.

Auxiliary services and alternative technologies authorized pursuant to § 22.901(d) are exempt from the OET Bulletin 53 compatibility specifications.

Discussion:

The proposed rule would unnecessarily limit carriers flexibility in designing new technologies and implementing nonconventional technical systems in the cellular band by requiring that they conform to existing compatibility requirements. Restricting carriers to compatibility standards is contrary to the Commission's finding in the *Auxiliary Service Offerings, R&O*, 3 FCC Rcd. at 7039 where the FCC found:

that nonconventional technical systems can be allowed in a major portion of the cellular allocation without adverse impact on the goal of maintaining compatible cellular systems. We believe that each cellular operator will find it in its own self interest to ensure that compatible service continues to be provided to roamers and to its own local customers who continue to use conventional mobile equipment.

Further, proposed § 22.901 ensures that cellular service, compatible with the OET standard, will continue to be provided when carriers choose to "use alternative cellular technologies and/or provide auxiliary common carrier services" See proposed § 22.901(d)(1), (2). See also *Auxiliary Services R&O*, 3 FCC Rcd. at 7039 ("A cellular operator choosing to implement advanced cellular technology will be required to use base stations that will provide conventional cellular services as well as advanced cellular service") Thus, providing carriers continue to make cellular service available to the public, to encourage in compliance with proposed § 22.901, licensees should be permitted to experiment with technologies and provide services which do not conform to the OET Bulletin.

§ 22.935**Procedures for comparative renewal proceedings.**NPRM:

[Proposed § 22.935 revises current § 22.916(b)(5)-(8) of the rules (procedures for evaluating mutually exclusive cellular applications in comparative hearings) and makes it applicable to comparative hearings for cellular renewal applications. *See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, Notice of Proposed Rulemaking, 7 FCC Rcd. 3658, 3754 (Appendix C) (1992) [hereinafter "*Part 22 Rewrite, NPRM*"]. The procedures for evaluating and processing mutually exclusive applications adopted in CC Docket No. 90-358, *Amendment of Part 22 of the Commission's Rules Relating to License Renewals*, Report and Order, 7 FCC Rcd. 719 (1992), *petition for recon. pending* [hereinafter "*Cellular Renewal, First R&O*"] are not incorporated.

Recommendation:

Replace the text of proposed § 22.935 with appropriately numbered rules incorporating the procedures adopted in the cellular renewal proceeding.

Discussion:

In CC Docket 90-358 (the cellular renewal proceeding), the Commission adopted "specific rules governing the conduct of comparative cellular renewal proceedings." 57 Fed. Reg. 3026 (January 27, 1992). *See also Part 22 Rewrite, NPRM*, 7 FCC Rcd. at 3658. Proposed § 22.935 does not incorporate these rules and instead revises existing § 22.916, to make it applicable to cellular renewals. This appears to be an oversight in drafting and should be corrected. Thus, the text of proposed § 22.935 should be replaced as discussed above. Any changes to the cellular renewal procedures made pursuant to further reconsideration should also be incorporated.

The recommendations set forth herein are intended only to ensure that substantive changes should be made only in the pending cellular renewal rulemaking, and are without prejudice to positions taken by NewVector (and others) in the renewal rulemaking.

§ 22.937**Demonstration of financial qualifications.**NPRM:

[Applicants for new cellular systems, including applicants for assignments and transfers, must include either a market-specific firm financial commitment or a showing of available financial resources sufficient to construct and operate for one year.]

Recommendation:

If the Commission did not intend to substantially change the nature of the costs that an assignee or transferee must be able to cover, the introductory paragraph should be revised to read:

Except as provided in paragraph (g) of this section, each applicant for a new cellular system must demonstrate that it has, at the time the application is filed, either a separate market-specific firm financial commitment or available financial resources sufficient to construct and operate for one year the proposed cellular system. Each applicant for assignment of license or consent to transfer of control must demonstrate that the proposed assignee or transferee has, at the time the application is filed, either a separate market-specific firm financial commitment or available financial resources sufficient to acquire the cellular system and complete consummation. Where the transfer or assignment involves an unconstructed cellular system, the assignee or transferee must also demonstrate that its financial commitment or available resources are sufficient to construct and operate the cellular system for one year.

Discussion:

The proposed revision of the introductory paragraph and subsection (d) is consistent with current Commission rules with regard to transfers and assignments of constructed cellular systems. Thus, the proposed revision is intended to clarify this policy while retaining the requirement that an applicant demonstrate that it has sufficient financing to complete the proposed acquisition.

§ 22.937(d)NPRM:

(d) Showings of financial resources. Applicants relying upon personal or internal financial resources must submit the following:

Recommendation:

Modify subsection (d) as follows:

(d) Showings of financial resources. Applicants relying upon personal or internal financial resources for a new cellular system must submit the following:

Discussion:

In the Commission's *First Report and Order* in the unserved area proceeding, *Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for the Unserved Areas*, First Report and Order and Memorandum-

dum Opinion and Order on Reconsideration, 6 FCC Rcd. 6185 (1991) [hereinafter "*Unserved Area, First R&O*"], the Commission eliminated the financial showing for "modified facilities in any MSA or RSA market." *See id.* at 6230 (¶ 110-111). *See also* 47 C.F.R. § 22.917(a)(1). The Commission found that applicants proposing modifications to its existing systems had already provided financial showings in previously filed applications and that the financial showing was not necessary. Thus, proposed § 22.937(d) should be amended to clarify that financial showings are required only in the case of "new cellular systems."

§ 22.937(g)

NPRM:

(g) Adjacent system exemption. Any licensee applying for an unserved area adjacent to its existing cellular system, to integrate such area into its existing system, is exempt from the financial demonstration requirements of this section.

Recommendation:

(g) Exemptions. The following are exempt from the financial demonstration requirements of this section:

- (1) Any licensee applying for an unserved area adjacent to its existing cellular system, to integrate such area into its existing cellular system;
- (2) Any entity acquiring an authorization through a pro forma transfer or assignment.

Discussion:

NewVector recommends that the proposed exemption be broadened to include pro forma transactions. The financial demonstration requirement of this section is unnecessary in pro forma transactions as the entity controlling the license remains unchanged and the Commission has already of the financial qualifications of said entity. This approach is consistent with existing Commission practice.

§ 22.937(h)

New Subsection

NPRM:

None (Proposed new subsection)

Recommendation:

A new paragraph (h) should be added, to read:

(h) Applicants relying upon personal or internal financial resources for acquiring a cellular system by a transfer of control or assignment must submit the following:

(1) financial statements, that show the availability of sufficient net current assets to acquire the system.

(2) a balance sheet current within 90 days of the date of filing that shows the continued availability of sufficient net current assets to acquire the cellular system.

(3) if the cellular system to be acquired by transfer of control or assignment has not yet been constructed, the transferee or assignee must also submit the information required in subsection (d) of this section.

Discussion:

New paragraph (h) is proposed to provide guidance to applicants filing applications (FCC Form 490s) seeking Commission consent to the transfer of control or assignment of Part 22 authorizations. The proposed rule change is consistent with current practice and supports the recommended modification to the introductory paragraph discussed above.

§ 22.939**Limitations on amendments to applications.**NPRM:

[Proposed § 22.939 sets out certain limitations (in addition to proposed § 22.122) regarding "amendments to applications for unserved areas." Specifically, in accordance with proposed § 22.939(a) and (b): Phase I applications may not be amended prior to conclusion of the random selection process; only tentative selectees of the random selection may make minor modifications to their applications; and, major amendments to Phase I applications will not be accepted.]

Recommendation:

Incorporate proposed § 22.939 into proposed § 22.949 as new subsection (e).

Discussion:

Proposed § 22.939 applies only to Phase I unserved area applications. Thus, it should be incorporated into the proposed § 22.949 governing procedures and filing windows specific to unserved area applications.

§ 22.939(c) New subsection

NPRM: None (New proposed subsection)

Recommendation/Discussion:

A new subsection § 22.939(c) should be added to incorporate the provisions of current § 22.918(c)(2), adopted in the unserved area proceeding, governing amendments to Phase II unserved area application. Because the permissive amendment rules are also specific to unserved area applications, they should be moved to proposed § 22.939. If, as recommended previously, § 22.939 is incorporated into § 22.949, the proposed new section would become § 22.949(f).

§ 22.941 System identification numbers.

NPRM: [System identification number assignment; licensees must file an FCC Form 489 to notify the Commission of changes to SID numbers.]

Recommendation:

Delete the proposed rule section.

Discussion:

NewVector believes the Commission should retain the responsibility of assigning and modifying SID numbers as they are transmitted as part of the carrier's cellular signal. Such procedures insure that carriers properly obtain and use SID numbers.

NewVector supports deleting the requirement of obtaining prior Commission approval before changing SID numbers, but does not believe an FCC Form 489 should be required, since an SID change does not affect a licensee's base stations. Instead, a notification should be permitted by letter filing with the appropriate number of copies for association with each affected station file attached.

§ 22.943 Limitations on assignment of cellular authorizations.

§ 22.943(a)(3) New Subsection

NPRM: None (New proposed subsection)

Recommendation:

Add a new subsection (a)(3) as follows:

(3). The sale, transfer, assignment or other alienation of any application to operate a new cellular system in an unserved area is prohibited. This alienation includes any form of alienation including option arrangements and agreements, and equity and debt placement plans.

Discussion.

NewVector recommends adding proposed new subsection (a)(3) to extend the prohibition on the sale, transfer, assignment or other alienation of interests to applicants seeking Commission authority to operate cellular systems in unserved areas. The change is necessary to discourage speculation by alienation of interests in cellular applications, and complements the Commission's proposed prohibition on speculation in cellular authorizations contained in subsection (a)(1).

§ 22.943(d) New Subsection.

NPRM: None (New proposed subsection: The *NPRM* does not discuss the limitation on assignments and transfers of cellular authorizations awarded as a result of a comparative renewal proceeding.)

Recommendation:

Proposed § 22.943 should be amended to add a new subsection (d) to incorporate current rule § 22.40(b)(2) (47 C.F.R. § 22.40(b)(2)) as follows:

(d) Renewal Authorizations. Except transfers or assignments permitted by this subsection, applications for assignment or transfer will be dismissed if the application is filed within three years from the date an authorization is awarded as a result of a comparative renewal proceeding involving the first cellular system on either channel block in a market.